



**LEGISLATION AND PUBLIC POLICY
COMMITTEE (LPPC)
MEETING NOTICE/AGENDA**

Posted at www.scdd.ca.gov

DATE: August 22, 2013

TIME: 10:00 a.m. – 3:00 p.m.

LOCATION: State Council on Developmental Disabilities
1507 21st Street, Suite 210
Sacramento, CA 95811
916/322-8481

Teleconference Site:

**Area Board 7
2580 North First Street, Suite 240
San Jose, CA 95131**

Pursuant to Government Code Sections 11123.1 and 11125(f), individuals with disabilities who require accessible alternative formats of the agenda and related meeting materials and/or auxiliary aids/services to participate in the meeting, should contact Michael Brett at 916/322-8481 or michael.brett@scdd.ca.gov by 5 pm on August 16, 2013.

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|----------------------------|--------------|
| 1. CALL TO ORDER | R. Ceragioli |
| 2. ESTABLISHMENT OF QUORUM | R. Ceragioli |

3. **WELCOME AND INTRODUCTIONS** R. Ceragioli

4. **APPROVAL OF 6/13/13 MINUTES** R. Ceragioli

5. **PUBLIC COMMENTS**

This item is for members of the public to comment and/or present information to the Council. Each person will be afforded up to three minutes to speak. Written requests, if any, will be considered first. The Council will also provide a public comment period, not to exceed a total of seven minutes, for public comment prior to action on each agenda item.

6. **LEGISLATIVE ISSUES**

A. State Legislation M. Polit

i. Update on Legislation with Council Position

ii. Equity

B. Legislative Platform and Existing Policies M. Polit 03

C. Federal Legislation (WIA) M. Polit 14

7. **PLANNING FOR NEXT MEETING** R. Ceragioli

8. **ADJOURNMENT** R. Ceragioli



State Council on Developmental Disabilities

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POLICY 2010-01: ON SPECIAL EDUCATION

Adopted 2010-03-16 : Last Amended - NA -

BACKGROUND:

The right of every individual to receive a meaningful education is a basic civil right that is well established in the records of our country and by international agreements. It is in the interest of the general welfare that the citizens of our country be educated so as to be better equipped to be productive members of their community and better contribute to society. The equal protection clause of the Fourteenth Amendment to the U.S. Constitution requires states to provide equal protection under the law to citizens of the United States. Even with states steeped in the mandate under the Fourteenth Amendment, it was not until 1954, when the U.S. Supreme Court decided *Brown versus Board of Education of Topeka*, in which the Court held that education "is a right which must be made available to all on equal terms". In recognition that equal education for all was a civil rights issue the Court wrote:

"Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is the very foundation of good citizenship. Today, it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such opportunity, where the state has undertaken to provide it, is a right that must be made available to all on equal terms."¹

In the international forum, the United Nations General Assembly enshrined the right of every individual to receive an education in the 1948 *Universal Declaration of Human Rights* and in a renewing pledge made by the world community at the 1990 *World Conference on Education for All* to ensure the right to a meaningful education for all regardless of individual differences.

In 1964 Congress passed the *Civil Rights Act of 1964*. This historic legislation not only encouraged the desegregation of public schools, but it also barred discrimination on the basis of race, religion, gender, or ethnicity. Providing a broad framework to advocate

¹ *Brown v. Board of Education*, 347 U.S. 483 (1954)

for equal rights to access public resources, the Act also laid the foundation for special education.

Following on the heels of the *Civil Rights Act of 1964*, in 1965 Congress enacted the *Elementary and Secondary Education Act (ESEA)* to address the inequality of educational opportunity for many underprivileged children. This landmark legislation provided a foundation to help ensure disadvantaged students had access to quality education. In 1966 Congress acted quickly in amending ESEA to encourage improvement in the education of children with disabilities. The National Council on Disability (NCD), an independent federal agency, noted:

“Congress first addressed the education of students with disabilities in 1966 when it amended the *Elementary and Secondary Education Act of 1965* to establish a grant program to assist states in “initiation, expansion, and improvement of programs and projects....for the education of handicapped children.” In 1970, that program was replaced by the *Education of the Handicapped Act (P.L. 91-230)* that, like its predecessor, established a grant program aimed at stimulating States to develop educational programs and resources for individuals with disabilities. Neither program included any specific mandates on the use of the funds provided by the grants; nor could either program be shown to have significantly improved the education of children with disabilities.”²

Again, with the drive to be free of discrimination, the *Rehabilitation Act of 1973* was the first of its kind, whereby Section 504 of this Act prohibited discrimination on the basis of disability. Additionally, the provisions were enforceable in court.

Despite the decisions of the United States Supreme Court and the equal rights momentum demonstrated in historic legislative acts, equal educational rights for students with disabilities did not exist. Public schools in the United States were still essentially closed to children with disabilities. Schools were **not required** to educate or even enroll children with developmental or other disabilities. Across the country court cases showed resistance by the established educational system to allow children with disabilities access to the same educational opportunities as their able-bodied peers. Equal educational rights for students with disabilities were not fully established until 1974, with the passage of PL 94-142, the *Education of All Handicapped Children Act (EAHCA)*. In 1990 EAHCA was renamed the Individuals with Disabilities Education Act (IDEA).

Today, with the weight of history and many pillars to support it, the federal special education law now known as the *Individuals with Disabilities Education and Improvement Act*, or IDEIA, promises millions of American children with disabilities access to a free and appropriate public education. Special education is now not a placement, but a service and children with disabilities, from birth to 21, are to be guaranteed access to specially designed instruction and related services through the development and implementation of an Individualized Education Program (IEP). It is intended that no child can legally be denied a free, appropriate, public education based upon his or her disability.

² *Back to School on Civil Rights*, published by the National Council on Disability (2000)

However, despite real progress made since 1974, significant work remains to be done to ensure that the promise of an "appropriate" education to all students with disabilities is kept. Too many children with disabilities continue to be denied the basic civil right of a meaningful education, frequently receiving services of trivial benefit, facing low expectations, and exclusion from regular classrooms. Congress too has noted these continuing problems and the intent to address in Section 1400 "Findings and Purpose" of the IDEA statute:

"However, the implementation of this title has been impeded by low expectations, and an insufficient focus on applying replicable research on proven methods of teaching and learning for children with disabilities." "Almost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by... having high expectations for such children... meet developmental goals and, to the maximum extent possible, the challenging expectations that have been established for all children; and be prepared to lead productive and independent lives to the maximum extent possible... strengthening the role and responsibility of parents ... coordinating this title with ... Elementary and Secondary Education Act of 1965"³

It is abundantly clear that the intent from Congress and from the historical recognition of the basic civil right to an education for all children receiving special education services are first and foremost general education children. A disability should not segregate an individual any more than should height, athletic ability, race or religious belief. Despite this basic fact, many (including educators and policy-makers) think of general education and special education as two separate systems and place them in competition with each other for attention and allocation of resources. According to the report by the President's Commission on Special Education, the bureaucratic imperatives of the system are focused on compliance with established procedures rather than academic achievement and this focus fails too many children.⁴ In reliance on compliance schools and the courts have often cited the first special education case decided by the U.S. Supreme Court in 1982 based on the 1975 EAHCA known as "Rowley"⁵ Many Local Education Agencies (LEA's) and judicial opinions still rely on the most minimal standards based on "access to" and "some benefit" from that access that are quoted in the Rowley opinion even though that was based on a time when even allowing children with disabilities to attend a public school was at issue. Some LEA's and the hearing courts have not recognized the intent of moving beyond the most basic "access" and "some benefit" standards to those of providing meaningful education opportunities for future productive and independent adult living as outlined in the language of the current IDEA.

Schools must do more to ensure that students with disabilities receive a meaningful education based on their individual potential with the same high expectations as for all children. Students with disabilities must be allowed real access to and inclusion in the general curriculum with needed accommodations, modifications and/or supports as well as access to assistive technology. Schools must concentrate on opening the doors to meaningful inclusion in the community of school for students with disabilities, including

³ 20 U.S.C. 1400(c)(4-5)

⁴ "A New Era: Revitalizing Special Education for Children and Their Families", (2002)

⁵ *Board of Education of Hendrick Hudson Central School District v. Rowley*, 1982

ensuring access to extracurricular activities. Efforts to assist students' transition from school to work or post-secondary studies and meaningful access to and inclusion in the daily life of our communities must be enhanced; too many youth with disabilities are still leaving school unprepared for life as adults.

Special education should be focused on providing those supports and services which allow the closing of the achievement gap between children with disabilities and their typically developing peers. IDEA includes not only the express intent for inclusion and high expectations in the education of children with disabilities but also strengthens the role of parents by full participation as a primary part of the Individualized Education Program (IEP) planning team that decides the appropriate special education supports and services alongside school district staff. To enforce full participation, IDEA includes not only procedural safeguards but also "Due Process" procedures in case of disagreement between team members. In case of disagreement, a Local Education Agency is able to state what it is willing to offer as a Free Appropriate Public Education (FAPE) and the parent may agree or not, then either party desiring a change in the IEP would initiate a due process. According to data from the NCD there are significant issues in the implementation and outcome of special education services that would be expected to result in a large percentage of enforcement cases brought forward to litigation:

"- a deep chasm of opinion on a number of issues particularly relevant to the quality of educational outcomes for students with disabilities. From the students, we hear the reality of their lives in special education. In most cases, the comments we received from them are a scathing indictment of the implementation of IDEA." ⁶

In the State of California approximately 700,000 children receive special education services and supports and the "Due Process" is administered by a quasi-judicial state agency known as the Office of Administrative Hearings (OAH, an agency under the executive branch of civil service). During fiscal year 2005-06, approximately 4,012 cases (approximately 0.6%) were filed with the OAH by families who did not agree with the level of supports, services or placement their children received from local school districts (38% of the filings were regarding assessment, while 51% regarded placement). Despite the fact that California has a comprehensive due process procedure in place (to appeal decisions of the schools) it appears that families have tended not to utilize the system –as reported by families, in part because the system is so difficult to understand and the process appears to favor the agency over the family. Agencies are more familiar with the system and better able to mount a judicial process than families of children with disabilities. Many families with children that have disabilities struggle financially and are stretched to maintain the stability of the home environment. The Local Educational Agency has employees and legal resources paid by public funds to mount a "Due Process" litigation whereas the family must rely on the limited time and resources of the parents. Additionally, because of the complexity and odds of the process, families are unable to find free and/or low cost representation in most cases. It is commonly understood by both families and agency representatives that "it is not an even playing field". Advocates report that the inequity of the system has intimidated many family members of the IEP and in some cases emboldened

⁶ *"Individuals With Disabilities Education Act Reauthorization: Where Do We Really Stand", (2002)*

agency members of the IEP. Family members and advocacy groups have grown increasingly concerned with the apparent inequities of the resolution process and the actual versus required impartiality of the system.

PRINCIPLES:

The State Council on Developmental Disabilities understands the importance of preparing all students for independent living and engaged and productive participation in the richness of our society. The State Council on Developmental Disabilities promotes implementation of high quality special education programs as an integral part of the general education community with transparent and impartial monitoring by the following actions:

1. As driven by the weight of history and legislative action, special education is a fundamental civil right, an integral part of the general education program, and a legal mandate. With values such as integration and inclusion replacing inequality and segregation, public education is a means to achieve social participation, productivity, and greater self-reliance leading to independent living to the maximum extent possible. Therefore, the State Council on Developmental Disabilities supports the strengthening or expansion of existing programs and/or creation of new programs to advocate for the right of all students with disabilities to receive a meaningful and free, appropriate, public education. Further, to improve upon outcomes leading to independent living to the maximum extent possible, the State Council on Developmental Disabilities supports early and continuous opportunities and actions to improve the transition from high school to adulthood.
2. With the scarcity of resources, some attitudes are expressed that reflect a belief that special education funding and resourcing usurps, or encroaches upon, resources that should go to general education programs (termed encroachment). Because such ideology discriminates against students with disabilities, the State Council on Developmental Disabilities promotes the civil rights of students with disabilities to be free of educational discrimination. The State Council on Developmental Disabilities will promote and partner with other to promote public outreach and education activities that reflect the values that students receiving special education services are part of the general education population and an integral part of their community.
3. Many families have reported extreme difficulty and experienced gaps in services during the transition from early intervention services (Part C services) to special education (Part B services) at age 3. Additionally, much research has been done that demonstrates the importance of children with disabilities receiving services during this critical period of neurodevelopment. A previous safeguard during this transition allowed children to continue receiving the services families had agreed to while attempting to resolve any disagreements in due process. However, that safeguard, termed "Stay Put", was lost for this transition period. Therefore, the State Council on Developmental Disabilities supports the return of this provision, as well as other provisions, that level the playing field between students with disabilities and schools.
4. As evidenced by the large percentage of appeals cases surrounding assessment and placement, many families have reported that IEP's are built on low expectations and that school staff undervalue or ignore their input regarding their children's ability

and potential. The State Council on Developmental Disabilities supports the use of assessments and systems that allow for effective identification of students who may be eligible to receive special education, effective assessments of individual needs, which include objective standardized assessments that are supplemented by parental input and other observational data. The Council supports the development of IEP goals that are accurately and appropriately based upon students' abilities and their developmental potential. The Council also supports schools maintaining high expectations that conform, to the maximum extent possible, as close to the California Department of Education's content standards and age appropriate developmental criteria.

5. In order to accurately assess the short- and long-term progress of students, the State Council on Developmental Disabilities supports annual and long term tracking of the progress of students with IEPs relative to standardized norms and to the general student population of their school community. Such tracking will assist schools and students in mutually monitoring their accountability to each other.
6. In following federal and California legal mandates, the State Council on Developmental Disabilities supports the identification and usage of peer reviewed, researched based methodologies to develop instructional strategies, services, and supports for IEPs as measured by implementation outcomes.
7. The operational effect of the law is the interplay of legislation, regulations developed by state and federal agencies, and case law created in courts. Because some issues may require clarification and/or update and because of this interplay, the State Council on Developmental Disabilities promotes education in support of legislative activities that clarify the intent and limitations behind out-of-date case law, legislation, and/or regulations.
8. To better measure the needs, frustrations, and satisfaction of families of children with developmental disabilities, the State Council on Developmental Disabilities supports the use of surveys regarding satisfaction with IDEA implementation by state and local educational agencies including but not limited to: the assessment of children, the identification of the appropriate services and supports to address needs, the definition of goals, objectives and the measurement of progress, the resolution, due process and appeals procedures, and other issues as appropriate.
9. Because of lack of clarity and concerns with how public funding is used by schools, the State Council on Developmental Disabilities supports the development of standards which promote the transparency of reporting on the use of public resources for purposes which include but are not limited to the funding special education receives as a percentage of total gross funding, funding devoted to each service and support by category, and cumulative annual and segregate case legal fees paid by each school district to attorneys.
10. In order to be effective in achieving the above actions and further advocacy on behalf of children with disabilities and their families, the State Council on Developmental Disabilities supports working with other advocacy groups, local, state and federal partnerships to coordinate actions, resources and identify areas of improvement related to special education.



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POLICY 2010-02: ON EMPLOYMENT FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES

Adopted 2010-03-16 : Last Amended - NA -

BACKGROUND:

People with developmental disabilities remain significantly under-represented in the workforce – data indicates that only 13% of working age individuals with developmental and intellectual disabilities are actually in competitive or supported employment. This equates to an unemployment rate of 87% for people with developmental and intellectual disabilities in California, ranking California 41st in the nation for the employment of this portion of our population. In acknowledgement of the under-representation of people with developmental disabilities in the workforce, AB 287 was signed into law in 2009. Amongst its many provisions is the adoption of a charge for an “Employment First” policy, which is intended to increase the number of people with developmental disabilities who are employed and earning at least minimum wage. This legislation established a requirement that the State Council on Developmental Disabilities coordinate with other state agencies and stakeholders to annually provide recommendations to the Legislature and the Governor on issues related to school to work opportunities for individuals with developmental disabilities.

AB 287 holds that:

“Increasing integrated and gainful employment opportunities for people with developmental disabilities requires collaboration and cooperation by state and local agencies, including, but not limited to, the State Department of Developmental Services and regional centers, the State Council on Developmental Disabilities, the Department of Rehabilitation, the State Department of Education and local school districts, and the Employment Development Department. The Legislature places a high priority on providing supported employment and other integrated employment opportunities for working-age adults with developmental disabilities.”

The State of California Department of Developmental Services, by mandate of the Lanterman Act, contracts with twenty-one private non-profit regional centers to coordinate life-long services and supports for individuals with developmental disabilities and their families. Regional centers are responsible for identifying and securing services and supports for people with developmental disabilities that allow them choices for living, working, learning and recreating in the community in which they live. The

“The Council advocates, promotes & implements policies and practices that achieve self-determination, independence, productivity & inclusion in all aspects of community life for Californians with developmental disabilities and their families.”

Department of Rehabilitation funds supported employment services that assist people with developmental disabilities to obtain employment and receive the supports they need to help ensure their success. The State Department of Education and Local Education Agencies are charged with preparing all students for independent and productive community participation. Special Education services are mandated by state and federal law to assist those with learning disabilities in the educational process intended to lead to independent living and economic self-sufficiency. The Employment Development Department is a state agency charged with connecting job seekers with employers in an effort to build and support the state economy. The State Council on Developmental Disabilities is established by state and federal law as an independent state agency to ensure that people with developmental disabilities and their families receive the services and supports they need.

Research demonstrates that wages and hours worked increase dramatically as individuals move from facility-based to integrated employment, and suggests that other benefits include expanded social relationships, heightened self-determination, and more typical job acquisition and job roles. Given these benefits, employment can be a critical key to enabling people with developmental disabilities to lead self-directed, productive, and satisfying lives.

Through productive employment, people with developmental disabilities may achieve or significantly progress towards a goal of independence and greater liberty of circumstance. Additionally, those individuals that are able to find employment become taxpayers and are more likely to use fewer government and regional center funded services such as day programs. With an approximately 87% unemployment rate and the added benefit of potential contribution rather than dependency on public funds it is clear that people with developmental disabilities are an important and largely untapped employment resource. Our nations' founding fathers in the Declaration of Independence listed life, liberty and the pursuit of happiness as "unalienable Rights". Furthermore research has shown that it is in the best interest of the state for the efficient use of public funds, and in conformance with state and federal laws, that people with disabilities who are able to work be supported in their efforts to find employment.

PRINCIPLES:

The State Council on Developmental Disabilities understands the key role that employment can make for people with developmental disabilities to lead self-directed, productive, and satisfying lives. Moreover, the federally mandated State Plan of the Council includes goals to assist Californians with developmental disabilities obtain, succeed, and advance in employment consistent with their interests, abilities, and needs. The State Council on Developmental Disabilities promotes opportunities and outcomes that maximize the employability of people with developmental disabilities by taking the following actions:

1. Because acquisition of a high school diploma significantly impacts one's ability to obtain employment, the State Council on Developmental Disabilities supports increased opportunity of students with developmental disabilities to graduate with a high school diploma.

2. Because the likelihood of individuals with developmental disabilities obtaining employment is greater if they move directly from school to work, education programs should prepare students for employment in community settings. Therefore, the State Council on Developmental Disabilities supports greater preparation for and more opportunities leading to employment for transition age students.
3. Career technical and occupational educational programs may be, but are not always, available throughout many school districts; students with developmental disabilities may have a limited opportunity to participate in such programs. Additionally, students with developmental disabilities may have limited opportunities to participate in post-secondary education. Therefore, the State Council on Developmental Disabilities supports more opportunities for students with developmental disabilities to participate in post-secondary education, career technical programs, and occupational educational programs, as well as maximizing the availability of such programs.
4. For some people, microenterprise businesses are the most effective means to obtain employment consistent with their interests, abilities, and needs. Therefore, the State Council on Developmental Disabilities supports the expansion of microenterprise opportunities for people with developmental disabilities.
5. Efforts to assist people with developmental disabilities obtain employment are hampered by a growing shortage of supported employment services, made worse by reimbursements that do not cover the providers' costs. Therefore, the State Council on Developmental Disabilities supports capacity building of high quality supported employment agencies.
6. Research demonstrates that wages and hours worked increase dramatically as individuals move from facility-based to integrated employment. Further, integrated employment creates greater opportunities for people with developmental disabilities to be integrated in their communities. Therefore, the State Council on Developmental Disabilities supports greater opportunities for integrated employment.
7. Because public perception of people with developmental disabilities may impact the employability of some people with developmental disabilities, the State Council on Developmental Disabilities, supports educational programs for the public that highlight the employability of people with developmental disabilities. Furthermore, in order to be effective in achieving the above actions and further advocacy on behalf of people with disabilities and their families, the State Council on Developmental Disabilities supports working with other advocacy groups, stakeholders, local, state and federal partnerships to coordinate and promote through commercial media and other forms the employment of people with disabilities.



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POLICY 2010-03: ON HOUSING FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES

Adopted 2010-03-16 : Last Amended - NA -

BACKGROUND:

It is universally accepted that all people, regardless of circumstance or abilities, generally desire a place to call home. People with developmental disabilities and their families who desire to pursue independent living quarters are faced with even more challenges than most when it comes to housing.

California has one of the highest costs of living in the nation, making it especially difficult for people with developmental disabilities to qualify for home ownership or rental housing without assistance. The need for accessible and affordable housing far outstrips the supply. As an additional burden for those individuals with disabilities who rely at least in part on Social Security income, Social Security policies regarding limiting the accumulation of savings make it difficult to save money toward the purchase or maintenance of a home. Additionally, people with disabilities are often subject to housing discrimination by those who are not open to sharing community space with people different than themselves. This prejudicial discrimination is sometimes also known as the "not in my backyard" (NIMBY) syndrome.

Those people with disabilities who are fortunate enough to find affordable and accessible housing often struggle with simple day to day tasks. In Home Support Services (IHSS) provide services to people with disabilities to allow them to live in their preferred home setting and avoid undesired institutionalization in congregate and/or segregated settings. Nonprofit agencies, independent living centers, and others offer some assistance to renters and homeowners with disabilities to adapt their home to incorporate accessibility features. The Section 8 program provides housing assistance to extremely low and very low-income individuals, families, senior citizens, and persons with disabilities. Program participants contribute up to 30% of their income towards their rent, the program is intended to provide support to them to find affordable, decent housing. For people with developmental disabilities the support of this or other programs may mean the difference between independent living and institutionalization. Funding for such programs is often endangered and legislation may be passed that has unintended consequences which negatively impact people with disabilities.

Significant barriers for people with developmental disabilities, and their families, to obtain rental housing, home ownership or even to remain in a current home exist.

"The Council advocates, promotes & implements policies and practices that achieve self-determination, independence, productivity & inclusion in all aspects of community life for Californians with developmental disabilities and their families."

Opportunities must be created and leveraged to develop and maintain integrated housing opportunities in a variety of the community settings for people with developmental disabilities. Additionally, housing accessibility and affordability must be increased and expanded for people with developmental disabilities.

PRINCIPLES:

The State Council on Developmental Disabilities understands the importance of housing. Moreover, the State Plan of the State Council on Developmental Disabilities includes goals to ensure Californians with developmental disabilities have access to affordable housing that provides control, choice, and flexibility regarding where and with whom they live. The State Council on Developmental Disabilities promotes opportunities and outcomes that maximize and increase housing available to people with developmental disabilities by the following actions:

1. Because the availability of accessible and affordable housing is far surpassed by the demand, the State Council on Developmental Disabilities supports increased opportunities to maximize and increase the availability of accessible and affordable housing stock. This includes taking action in issues such as:
 - programs to assist people with disabilities to make their homes accessible;
 - pursuing opportunities to obtain accessible, affordable, public property;
 - Section 8 housing; and,
 - housing identified through the housing element assessment planning process.
2. Because economic uncertainty and unintended consequences of legislation may limit or endanger needed services and supports to maintain people with developmental disabilities in their own home, the State Council on Developmental Disabilities supports maximizing access to services, which includes ensuring people with developmental disabilities remain eligible for such services and supports that allow them the opportunity of choice of living arrangements.
3. Social security policies have required limits on savings accounts for people with developmental disabilities, making it difficult to save for a home. Therefore, the State Council on Developmental Disabilities supports the creation of programs, or expansion of existing programs, that enable people with developmental disabilities to save for housing and/or the maintenance of a home.
4. Occasionally bills are introduced that are designed to limit who may live where – “NIMBY” bills that discriminate against people with developmental disabilities. Therefore, the State Council on Developmental Disabilities supports the right of people with developmental disabilities to be free from housing discrimination.

Memorandum

To: HELP Committee Members and staff and Stakeholders

From: Chairman Tom Harkin (D-Iowa) and Ranking Member Lamar Alexander (R-Tenn.)

Date: Friday, July 19, 2013

Subject: Bipartisan Support for Changes to the *Vocational Rehabilitation Act*

As the Chairman and Ranking Member of the Senate Health, Education, Labor, and Pensions (HELP) Committee, we are proposing changes to the *Vocational Rehabilitation Act* within the *Workforce Investment Act* as a bipartisan effort to strengthen employment opportunities, research, and independent living services and supports for individuals with disabilities.

These changes affect the location of important programs that advance the interests of Americans with disabilities. The first is to move the Rehabilitation Services Administration, the largest employment program for individuals with disabilities, from the U.S. Department of Education (ED) to the U.S. Department of Labor (DOL). The second is transferring ED's Independent Living program to the U.S. Department of Health and Human Services (HHS) as part of the Administration for Community Living. The third proposes shifting the National Institute on Disability and Rehabilitation Research from ED to HHS.

As young people with disabilities prepare for life after school, it is critical they have the opportunities to experience internships, part-time employment, and summer work just like their peers without disabilities. The changes we propose in this reauthorization will help close the labor force participation gap and produce better outcomes in competitive integrated employment for a new generation of young adults with disabilities.

To foster the goal of closing the workforce participation gap for people with disabilities, the Chairman and Ranking Member have proposed a number of changes. The first change is to move the Rehabilitation Services Administration from ED to DOL. This program is the largest employment program for individuals with disabilities and rightly belongs to DOL.

This move finally allows for individuals with disabilities to be treated equally in terms of the workforce priorities of the Federal government. This rightly places the efforts to help Americans with disabilities in the same Federal agency charged with helping all Americans find work.

We are transferring ED's Independent Living program to HHS as part of the Administration for Community Living.

We know the importance of the Independent Living program to provide services to individuals with disabilities to maximize their independence and ability to participate fully in all aspects of American society. This move builds on the positive work by Secretary Sebelius to create

integrated, comprehensive programs that serve individuals with disabilities so these programs are more effective and have greater impact in the day to day lives of the people they serve.

Finally we are shifting the National Institute on Disability and Rehabilitation Research from ED to HHS.

This move will allow for more effective coordination of disability research in the Department best suited to fulfill this role. We should maintain the same high expectations for disability and independent living research as we do for other research areas.

Quick summary of proposed changes to the Vocational Rehabilitation Act

Throughout: emphasis on *high expectations* and *competitive integrated employment* for individuals with disabilities, particularly for youth/students with significant disabilities.

Introductory section/definitions: new definitions for competitive integrated employment, supported employment, customized employment strategies, pre-employment transition services to reflect 21st Century workforce needs.

Title I: Vocational Rehabilitation:

Strengthen reporting requirements regarding individuals served and successes.¹

Extend supported employment availability to 24 months.

Increased opportunities for connection with other programs – educational (IDEA transition), eligibility for home and community based waiver programs, assistive technology, ticket to work.

Presumption of benefit: individual applicants presumed to be able to benefit from an employment outcome from VR. VR responsible for exploring individual's capacity through trial work experiences, including supported employment, and to become employed in competitive integrated employment. Individualized determination of ineligibility, based on data, rather than on presumptions or stereotypes.

Pre-employment transition services for students with disabilities including school based preparatory experiences, job exploration counseling, work based learning experiences and counseling in opportunities in transition or postsecondary program at an institution of higher education. Local pre-employment transition coordinator in each local VR office and national coordinators at Dept. of Education and Dept. of Labor.

Set aside 15% of a state's vocational rehabilitation funds to serve young people with disabilities who are transitioning from school to the workforce.

Rename the Rehabilitation Services Administration the Disability Employment Services and Supports Administration (DESSA) and moves the new DESSA from the Department of Education to the Department of Labor, to better align the disability workforce development system with the broader workforce development system.

Title II: Research and Training

Improve the National Institute on Disability and Rehabilitation Research's (NIDRR's) dissemination requirements.

¹ We have asked the Department of Education for technical assistance on the evaluation, data collection, formula changes, and reporting provisions to make sure that the draft provisions are achievable and not overly burdensome.

Align NIDRR's mission and role by renaming NIDRR the National Institute on Disability and Independent Living Research (NIDILR) and moving NIDILR to the Administration for Community Living at the US Department of Health and Human Services.

The Chair of the Interagency Committee on Disability Research is no longer the head of NIDILR and instead will be the Secretary of Health and Human Services or her designee.

Title III: Special Projects and Demonstrations

One project focused on improving transition from school to work for youth with significant disabilities, especially focusing on their participation in competitive integrated employment.

Title IV: National Council on Disability

Reduce size of NCD from 15 members to 9 members, which will save approximately \$60,000 per year and enable NCD to allocate more resources to its research and policy mission.

Title V: Rights and Advocacy

Encouraging competitive integrated employment for young people with disabilities.

Title VI: Employment Opportunities for Individuals with Disabilities

Divided program for supported employment in order to prioritize serving youth with the most significant disabilities.

Title VII: Independent Living

Increased focus on enhancing statewide reach, unserved, and underserved populations.

Moving the Independent Living program out of RSA and into the Administration for Community Living at HHS, and improving oversight and accountability requirements for Centers for Independent Living and Statewide Independent Living Councils.

Title VIII: Miscellaneous

Authorizes the Office of Disability Employment Policy (ODEP) at the US Department of Labor and renames ODEP the Office of Disability Employment Policy, Services, and Supports.

Public education campaign on employment of individuals with disabilities, tax credits.

out this section such sums as may be necessary for each of the fiscal years ~~1999 through 2003~~
2014 through 2018.

(~~nm~~) DEFINITIONS.—As used in this section:

(1) ELIGIBLE SYSTEM.—The term “eligible system” means a protection and advocacy system that is established under subtitle C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000~~\1\~~ and that meets the requirements of subsection (f).

~~\1\~~So in law. Probably should read “subtitle C of title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000”. See the amendment made by section 401(b)(3)(C) of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (Public Law 106–402; 114 Stat. 1738).

(2) AMERICAN INDIAN CONSORTIUM.—The term “American Indian consortium” means a consortium established as described in section 142 of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6042).

(29 U.S.C. 794e)

Sec. 510

SEC. 510. ESTABLISHMENT OF STANDARDS FOR ACCESSIBLE MEDICAL DIAGNOSTIC EQUIPMENT.

(a) ~~Standards Standards~~.—Not later than ~~24~~24 months after the date of enactment of the ~~Affordable Health Choices Act~~ Affordable Health Choices Act, the Architectural and Transportation Barriers Compliance Board shall, in consultation with the Commissioner of the Food and Drug Administration, ~~promulgate regulatory standards in accordance with the Administrative Procedure Act (2 U.S.C. 551 et seq.) setting forth the minimum technical criteria for medical diagnostic equipment used in (or in conjunction with) physician’s offices, clinics, emergency rooms, hospitals, and other medical settings. The standards shall ensure that such equipment is accessible to, and usable by, individuals with accessibility needs, and shall allow independent entry to, use of, and exit from the equipment by such individuals to the maximum extent possible.~~

(b) Medical Diagnostic Equipment Covered.—The standards issued under subsection (a) for medical diagnostic equipment shall apply to equipment that includes examination tables, examination chairs (including chairs used for eye examinations or procedures, and dental examinations or procedures), weight scales, mammography equipment, x-ray machines, and other radiological equipment commonly used for diagnostic purposes by health professionals.

(~~de~~) Review and Amendment.—The Architectural and Transportation Barriers Compliance Board, in consultation with the Commissioner of the Food and Drug Administration, shall periodically review and, as appropriate, amend the ~~standards in accordance with the Administrative Procedure Act (2 U.S.C. 551 et seq.)~~ standards in accordance with the ~~Administrative Procedure Act (2 U.S.C. 551 et seq.)~~.

SEC. 511 LIMITATIONS ON EMPLOYMENT OF INDIVIDUALS WITH DISABILITIES AT A SUBMINIMUM

PLEASE REVIEW SECTION 511.

Mac

WAGE.

(1) IN GENERAL.-An entity, including a contractor or subcontractor of the entity, may not employ an individual with a disability at a wage (referred to in this section as a "subminimum wage") that is less than the Federal minimum wage unless the entity has complied with the requirements of section 14(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 214(c)), and any of the following additional conditions is met:

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(1) The individual is currently employed, as of the effective date of this section, by an entity that holds a valid certificate pursuant to section 14(c) of the Fair Labor Standards Act of 1938 (referred to in this section as a "certificate holder").

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(2) The individual is older than age 24 on the date when the individual begins employment at a subminimum wage.

(3) The individual is age 24 or younger and, before beginning work at a subminimum wage, has completed, and produces documentation indicating completion of, each of the following 3 actions:

(A) The individual has received pre-employment transition services that are available to the individual under section 114, or transition services under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et. seq.) such as transition services available to the individual under section 614(d) of that Act (20 U.S.C. 1414(d)).

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(B) The individual has applied for vocational rehabilitation services under title I, with the result that-

(i) the individual has been found ineligible for the services pursuant to that title; or

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(ii) (I) the individual has been determined to be eligible for vocational rehabilitation services;

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(II) the individual has an individualized plan for employment under section 102;

(III) the individual has been working toward an employment outcome specified in such individualized plan for employment, with appropriated supports and services, for a reasonable period of time without success; and

(IV) the individual's vocational rehabilitation case is closed after the individual's qualified vocational rehabilitation counselor and the individual both agree that continued efforts by the individual to work toward an employment outcome, as defined in section (7), at the present time will likely not be successful.

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(C) The individual (with, in an appropriate case, the individual's parent or guardian)-

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(i) has been provided career counseling, and information and referrals to Federal and State programs and other resources in the individuals' geographic area that offer employment-related services and supports designed to enable the individual to explore, discover, experience, and attain competitive integrated employment;

(ii) understands the conditions under which a subminimum wage may be paid; and

(iii) consents to work for the employer and be paid a subminimum wage.

(4) The individual, regardless of age, is receiving work readiness or job training services provided by a certificate holder, as part of the individual's preparation for competitive integrated employment, for-

(A) a period of not more than 6 months; or

(B) a longer period, if the individual wishes to continue to receive such services after an initial 6-month period and is reassessed by the agency referring the individual for such services, or an appropriate entity, not less often than every 6 months, to determine the individual's ability to transition to competitive integrated employment.

(b) CONSTRUCTION. -

(1) SERVICES -- Nothing in subsection (a)(3)(B) shall be construed to prohibit a designated State unit from allowing an individual to receive work readiness or job training services provided by a certificate holder, for a period of not more than 6 months.

(2) RULE -- Nothing in this section shall be construed as changing the purpose of this Act described in section 2(b)(1), to empower individuals with disabilities to maximize opportunities for competitive integrated employment.

(c) DURING EMPLOYMENT.---

(1) IN GENERAL -- The entity described in subsection (a) may not continue to employ an individual at a subminimum wage unless, after the individual begins work at that wage, at the intervals described in paragraph (2), the individual (with, in an appropriate case, the individual's parent or guardian)--

(A) is provided career counseling, and information and referrals described in subsection (a)(3)(C)(i), delivered in a manner that facilitates independent decisionmaking and informed choice, as the individual makes decisions regarding employment and career advancement; and

(B) is informed by the employer of self-advocacy, self-determination, and peer mentoring training opportunities available in the individual's geographic area, provided by an entity that does not have a financial interest in the individual's employment outcome, under applicable Federal and State programs or other sources.

(2) TIMING -- The actions required under subparagraphs (A) and (B) of paragraph (1)

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shall be carried out once every 6 months for the first year of the individual's employment at a subminimum wage, and annually thereafter for the duration of such employment.

(3) SMALL BUSINESS EXCEPTION -- In the event that the entity described in subsection (a) is a business with fewer than 15 employees, such entity can satisfy the requirements of subparagraphs (A) and (B) of paragraph (1) by referring the individual, at the intervals described in paragraph (2), to the designated State unit for the counseling, information, and referrals described in subparagraph (A) and the information described in subparagraph (B).

(d) DOCUMENTATION.-

(1) IN GENERAL.-The designated State unit, in consultation with the State educational agency, shall develop a new process or utilize an existing process, consistent with guidelines developed by the Secretary, to document the completion of the actions described in subparagraphs (A), (B), and (C) of subsection (a)(3) by a youth with a disability who is an individual with a disability.

(2) DOCUMENTATION PROCESS- Such process shall require that-

(A) in the case of a student with a disability, for documentation of actions described in subsection (a)(3)(A)-

(i) if such a student with a disability receives and completes each category described in clauses (i) through (v) of section 7(30)(B) of available pre-employment transition services, such completion of services shall be documented by the designated State unit in a manner consistent with this section;

(ii) if such a student with a disability receives and completes any transition services available for students with disabilities under the Individuals with Disabilities Education Act, including those provided under section 614(d)(1)(A)(i)(VIII) (20 U.S.C. 1414(d)(1)(A)(i)(VIII)), such completion of services shall be documented by the appropriate school official responsible for the provisions of such transition services for students with disabilities in the school or school district, in a manner consistent with this section; and

(iii) a Local Pre-Employment Transition Coordinator shall provide the final documentation, in a form and manner consistent with this section, of the completion of pre-employment transition services as described in clause (i), or transition services under the Individuals with Disabilities Education Act as described in clause (ii), to the student with a disability within a reasonable period of time following the completion; and

(B) when an individual has completed the actions described in subsection (a)(3)(C), following the completion of the actions described in subparagraphs (A) and (B) of subsection (a)(3), the designated State unit shall provide the individual a document indicating such completion, in a manner consistent with this section.

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within a reasonable time period following the completion of the actions described in this subparagraph.

(e) VERIFICATION.-

(1) BEFORE EMPLOYMENT.-Before an individual covered by subsection (a)(3) begins work for an employer at a subminimum wage, the employer shall review the documentation received by the individual under subsection (d), and provided by the individual to the employer, that indicates that the individual has completed the actions described in subparagraphs (A), (B), and (C) of subsection (a)(3) and the employer shall maintain copies of the documentation.

(2) DURING EMPLOYMENT.-In order to continue to employ an individual at a subminimum wage, the employer shall verify completion of the requirements of subsection (c), including reviewing any relevant documents provided by the individual, and shall maintain copies of the documentation.

(f) FEDERAL MINIMUM WAGE.-In this section, the term 'Federal minimum wage' means the rate applicable under section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)).

(b) EFFECTIVE DATE.-This section takes effect 2 years after the date of enactment of the Workforce Investment Act of 2013.

(29 U.S.C. 794f)

TITLE VI—EMPLOYMENT OPPORTUNITIES FOR INDIVIDUALS WITH DISABILITIES

short title

Sec. 601

Sec. 601. This title may be cited as the "Employment Opportunities for Individuals With Disabilities Act".

(29 U.S.C. 701 note)

Part A—Projects With Industry

Sec. 611

projects with industry

Sec. 611. (a)(1) The purpose of this part is to create and expand job and career opportunities for individuals with disabilities in competitive integrated employment in the in the competitive- labor market by engaging the talent and leadership of private industry as partners in the rehabilitation process, to identify competitive job and career opportunities and the skills needed to perform such jobs, to create practical job and career readiness and training programs, and to provide job placements and career advancement locally.

(2) The Commissioner, in consultation with the Secretary of Labor and with designated State units, may award grants to individual employers, community rehabilitation program providers,

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1 labor unions, trade associations, Indian tribes, tribal organizations, designated State units, and
2 other entities to establish jointly financed local and national Projects With Industry to create and
3 expand job and career opportunities in competitive integrated employment for individuals with
4 disabilities, which projects shall—

5 (A) provide for the establishment of business advisory councils, that shall—

6 (i) be comprised of—

7 (I) representatives of private industry, business concerns, and organized labor;

8 (II) individuals with disabilities and representatives of individuals with
9 disabilities; and

10 (III) a representative of the appropriate designated State unit;

11 (ii) identify job and career availability within the community, consistent with the
12 existing and emerging in-demand industry sectors and occupations, and the
13 employment needs of employers in those industry sectors and occupations, identified
14 by the local workforce development board for the corresponding local area under
15 section 118(b)(1)(A) of the Workforce Investment Act of 2013; identify job and career
16 availability within the community, consistent with the current and projected local
17 employment opportunities identified by the local workforce investment board for the
18 community under section 118(b)(1)(B) of the Workforce Investment Act of 1998;

19 (iii) identify the skills necessary to perform the jobs and careers identified; and

20 (iv) prescribe training programs designed to develop appropriate job and career
21 skills, or job placement programs designed to identify and develop job placement and
22 career advancement opportunities, for individuals with disabilities in fields related to
23 the job and career availability identified under clause (ii); and

24 (v) coordinate such training and job placement activities with the local workforce
25 development boards described in clause (ii) as appropriate, and with the Job Corps
26 center industry councils established under section 254 of the Workforce Investment
27 Act of 2013.

28 (B) provide job development, job placement, and career advancement services;

29 (C) to the extent appropriate, provide for—

30 (i) training in realistic work settings in order to prepare individuals with disabilities
31 for employment and career advancement in the competitive market; and

32 (ii) internship programs for individuals with disabilities who seek employment; and

33 (iii) to the extent practicable, the modification of any facilities or equipment of the
34 employer involved that are used primarily by individuals with disabilities, except that a
35 project shall not be required to provide for such modification if the modification is
36 required as a reasonable accommodation under the Americans with Disabilities Act of
37 1990 (42 U.S.C. 12101 et seq.); and

38 (D) provide individuals with disabilities with such support services as may be required in
39 order to maintain the employment and career advancement for which the individuals have
40 received training under this part.



The Honorable Tom Harkin, Chairman and
The Honorable Lamar Alexander, Ranking Member
Senate Committee on Health, Education, Labor & Pensions
United States Senate
Washington DC 20510

Dear Chairman Harkin and Ranking Member Alexander:

On behalf of the National Association of Councils on Developmental Disabilities, thank you for your extraordinary leadership in sponsoring positive bi-partisan legislation to reauthorize the Workforce Investment Act. NACDD is the association of state and territorial Councils on Developmental Disabilities whose members provide crucial leadership on disability policy in every state and territory.

Because NACDD supports competitive integrated employment at minimum wage or above for people with disabilities and providing incentives to phase out segregated workshops, we support your WIA/Rehab Act bill¹ as a whole and the focus on vocational rehabilitation. We applaud the emphasis on integrated, competitive employment and provisions such as presumption of eligibility for VR services, 15% set-aside to serve young people in transition from school to work, allowing 24 months for supported employment, and providing for pre-employment transition services. We appreciate requiring students emerging from IDEA education to apply for vocational rehabilitation services and first try participating in integrated employment. We also appreciate that individuals of any age must go through some steps too.

We believe it is important to move this bill as soon as feasible within the political context. We look forward to continuing to work with you and your outstanding staff towards enactment. We have shared with staff what we believe are short but important and useful clarifications to achieve the goals of this legislation.

Sincerely yours,

Debra Dowds
Chair, Public Policy Committee
National Association of Councils on Developmental Disabilities Debra Dowds
dbrad@fddc.org

¹ As released 7-19-13.

The Honorable Tom Harkin, Chair and
The Honorable Lamar Alexander, Ranking Member
Health, Education, Labor, and Pensions Committee
United States Senate
Washington, DC 20510

July 23, 2013

Dear Chairman Harkin and Ranking Member Alexander,

On behalf of the Association of University Centers on Disabilities (AUCD), I would like to thank you for introducing a bill to reauthorize and strengthen the Workforce Investment Act, including Title V, the Rehabilitation Act. AUCD is a national non-profit organization that represents a network of interdisciplinary Centers advancing policy and practice for and with individuals with developmental and other disabilities in their communities.

AUCD believes that the draft bipartisan bill to reauthorize the Workforce Investment Act is in line with our association's employment policy, which is based upon the presumption of employment for all persons with disabilities and employment first strategies. This bill embraces policies, procedures and practices that support the access, maintenance and advancement in employment by persons with disabilities and that the primary or preferred outcome is competitive integrated employment.

AUCD especially appreciates the Senators' strong focus on increased transition services for youth with significant disabilities. The new National Transition Initiative will ultimately create enduring systems of service delivery and training within states that will increase the number of students who graduate from high school to go on to postsecondary educational opportunities and/or integrated employment with wages that lead to self-sufficiency.

Section 511 of the draft bill is designed to address the current problem of special education students, primarily students with intellectual and developmental disabilities, being tracked from school to jobs that pay less than minimum wage. In order to address this problem, Section 511 requires youth with disabilities, upon leaving school, to apply for services from VR and try out jobs that offer competitive wages before they are eligible to work in any job that pays less than the minimum wage. This section, along with the transition initiative and other positive amendments, will move our country in the right direction.

Given our country's economic challenges and the unemployment statistics, we believe that these policies must be enacted as quickly as possible. AUCD looks forward to working with you to move this bill quickly. For more information, please contact Kim Musheno in our national office at 301-588-8252, ext. 222.

Sincerely,



Julie Ann Fodor, PhD
President



George Jesien, PhD
Executive Director

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Dawn Olson, BS
Council on Community Advocacy

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Council for Interdisciplinary Service

Kelly Roberts, PhD
Council on Research and Evaluation

Thomas Uno, EdS
Multicultural Council

Amy Sharp, PhD
National Community Education Directors Council

Toby Long, PhD
National Training Directors Council

George S. Jesien, PhD
Executive Director



Commemorating 40 Years Of Disability Advocacy 1973-2013

July 29, 2013

U.S. Senator Tom Harkin
Chairman
Senate Committee on Health, Education,
Labor & Pensions (HELP)
United States Senate
Washington, DC 20510

U.S. Senator Lamar Alexander
Ranking Member
Senate Committee on Health, Education,
Labor & Pensions (HELP)
United States Senate
Washington, DC 20510

U.S. Senator Patty Murray
Member
Senate Committee on Health, Education,
Labor & Pensions (HELP)
United States Senate
Washington, DC 20510

U.S. Senator Johnny Isakson
Member
Senate Committee on Health, Education,
Labor & Pensions (HELP)
United States Senate
Washington, DC 20510

Dear Senators:

On behalf of the Employment and Training Task Force of the Consortium of Citizens with Disabilities (CCD), we thank you for your extraordinary leadership in co-sponsoring this reauthorization of the Workforce Investment Act, including the Rehabilitation Act. This kind of bi-partisanship is rare and admirable in this Congress – especially on reauthorization of major legislation. We hope your joint effort will be an inspiration to your colleagues in both the Senate and House.

CCD is a coalition of over 100 national disability rights, advocacy and provider organizations that advocates on behalf of the 57 million people with disabilities and their families. The Employment and Training Task Force follows issues affecting employment opportunities for working age individuals with disabilities.

The task force supports many of the provisions in the legislation, S.1356, Workforce Investment Act of 2013 including:

- Creation of local transition coordinators within the VR system to ensure the effective delivery of pre-employment transition services for all youth with disabilities, including those with significant disabilities and greater linkages between the VR system and special education. We hope that the resources to effectively implement this new provision will be available to the local offices.
- Direct emphasis on the preferred outcomes of competitive integrated employment and post-secondary education for all youth, including youth with significant disabilities.
- Directing that the Independent Living Program be moved from the Department of Education to the Department of Health and Human Services (HHS), specifically to Administration for Community Living (ACL). The move ensures that the program remain vital to the needs of people with disabilities to be able to live independently and establishes an Independent Living Administration.

- Directing increased coordination between state VR systems and entities responsible for carrying out the Ticket to Work and Self Sufficiency Program.
- Specific requirements that individualized plans for employment contain information concerning Ticket to Work, benefits under Medicaid, benefits planning and assistance and protection and advocacy services for beneficiaries of Title II and Title XVI. These sections should help those on federal disability benefits take full advantage of the return to work supports and services available to them.
- The committee's request for a GAO study of the interaction between the Ticket to Work program and the Rehabilitation Act. Given the difficulties that arose between employment networks (ENs) and state vocational rehabilitation (VR) systems in the early years of Ticket to Work, we are eager for an evaluation of the regulatory changes adopted to address those challenges. We are particularly interested in whether increased collaboration between ENs and state VR has resulted in better employment outcomes for people with disabilities.
- The proposed amendments in Sections 19, 112, and 509 of the Rehabilitation Act reauthorizing the Client Assistance Program (CAP) and Protection and Advocacy of Individual Rights (PAIR) programs. One amendment would allow the establishment of a CAP affiliated with the American Indian Consortium serving the Navajo Nation and Hopi Tribe. This would make the CAP program consistent with the Protection and Advocacy programs. The proposed amendments would also clarify provisions relating to the rights and authorities of the PAIR program and make them consistent with the other Protection and Advocacy programs. These are critical updates that will help the PAIR and CAP programs more effectively assist people with disabilities nationwide.
- Finally, we applaud the authorization of the Office of Disability Employment Policy. It is essential that this office be grounded in statute to ensure its ongoing place in the workforce development system.

In May 2013, the task force submitted to the Committee our consensus recommendations for comprehensive revisions to the Rehabilitation Act. Below we would like to highlight some of our key recommendations for improving the language in the legislation as introduced.

1. Revise definition under Section 504 (5)(A)(iii) as follows:

(5) Competitive Integrated Employment

(A) (iii) that is at a location where the employee has the opportunity to interact with other ~~employees~~ persons who are not individuals with disabilities (not including supervisory personnel) to the same extent that individuals without disabilities in comparable positions interact with other persons;

Rationale: The Task Force agreed to improving the definition to reflect the realities of above minimum wage community jobs (i.e.: food truck worker, mall kiosk worker, building night guard, etc.) who do not have "an opportunity to interact with other employees who are not individuals with disabilities (not including supervisory personnel)" due to the nature of the job - thus not qualifying under the HELP Committee definition.

2. Move the Assistive Technology Program to the Administration on Intellectual and Developmental Disabilities (AIDD) rather than to the Department of Labor.

Rationale: The Administration on Intellectual and Developmental Disabilities, under the Administration on Community Living, is the appropriate entity to oversee the Assistive Technology rather than the Department of Labor. Given the statutory mandates of the AT Act, its programs primarily address education and community living matters and are more appropriately placed within

AIDD rather than DOL. Additionally, AIDD currently houses agencies with which the State AT programs frequently interact including the state and territorial Councils on Developmental Disabilities (DD Councils), the Protection and *Advocacy agencies*, and the University Centers for Excellence in Developmental Disabilities Education, Research, & Service (UCEDDs), one-third of which are also located within AIDD. This change would provide for much more effective synergy and collaboration.

3. Amend Section 11 as follows:

Sec. 11 Relationship to application of other laws

Sec. 11. (a) The provisions of the Act of December 5, 1974 (Public Law 93–510) and of title V of the Act of October 15, 1977 (Public Law 95–134) shall not apply to the administration of the provisions of this Act or to the administration of any program or activity under this Act.

(29 U.S.C. 708)

Sec. 11 (b) This Act shall be interpreted in accordance with the Americans with Disabilities Act as amended and the US Supreme Court’s 1999 decision in *Olmstead v. L.C.*... Nothing in this legislation shall be construed as in any way limiting the application of either the Americans with Disabilities Act as amended or the *Olmstead* decision and its progeny,

Rationale: This provision clarifies that to the extent that anything in Title V is not in conformance with *Olmstead* and ADA, *Olmstead* and the ADA prevail. It may well be helpful in future litigation.

4. Revise Section 102 (a) as follows:

a. Under the 513 section of the bill which amends Sec. 102, “(2) Presumption of Benefit.”, “(B) Responsibilities.” our recommended changes are:

“(ii) in the first sentence-

(I) by striking “In making the demonstration required under subparagraph (A),” and inserting “Prior to determining under this subsection that an applicant described in subparagraph (A) is unable to benefit due to the severity of the individual’s disability in terms of an employment outcome from vocational rehabilitation services or that the individual is ineligible for vocational rehabilitation services,”; and”

a. Under the section of the bill which amends Section 102, “(3) Presumption of Eligibility.”, (A) In General.” our recommended changes are:

“(2) in paragraph (3)(A)(ii), by striking “outcome from” and all that follows and inserting “outcome, including supported employment, from vocational rehabilitation services due to the current (as of the date of the determination) severity of the disability of the individual.,”;

b. Under the section of the bill which amends Section 102, “(5) Determination of Ineligibility.” our recommended changes are:

“(C) by inserting before subparagraph (B) the following:

“(A) the ineligibility determination shall be an individualized one, based on the available data, and shall not be based on assumptions about broad categories of disabilities or the severity of an individual’s disability;”

Rationale: As the bill seeks to set a high bar for outcomes, it is vital that VR agencies begin the eligibility determination process from the perspective that everyone can benefit from VR services. Unfortunately, both existing law and the bill as introduced permit VR agencies to find people ineligible on the basis of the severity of a person’s disability. As expectations for competitive integrated employment rise, it is important to minimize the risk that people who need services may be denied eligibility because their disabilities are severe. We recommend removing references to the severity of the person’s disability in three places in the section of the bill which amends Sec. 102 of the Rehabilitation Act, “Eligibility and Individualized Plan for Employment.”

5. Revise Section 303(c)(2)(B) as follows:

“(B) INDIVIDUAL WITH AN INTELLECTUAL DISABILITY.-In this paragraph, the term ‘individual with an intellectual disability’ means an individual with a ~~cognitive impairment, disability~~ that originates before the age of 18 and is characterized by significant limitations in both intellectual function and adaptive behavior, which covers many everyday social and practical skills.-
~~(i) intellectual and cognitive functioning; and~~
(ii) adaptive behavior as expressed in conceptual, social, and practical adaptive skills.

Rationale: In amending Sec. 303 of the Rehabilitation Act, “Demonstration and Training Programs”, under “National Transition Initiative for Youth with Significant Disabilities,” the bill inserts a definition of “individual with an intellectual disability” that does not conform to the accepted definition developed and promulgated by AAIDD. We recommend changing the definition to conform to the AAIDD definition.

6. Delete Section 802 Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities

Rationale: We do not support the idea of establishing another advisory committee to conduct research and study on competitive integrated employment for individuals with disabilities when this type of work can be conducted by the National Council on Disability.

7. Revise Section 803 (a) as follows:

- (a) The public education campaign for employers (including small businesses) shall provide information on the abilities of individuals with disabilities, ~~their contributions to the workforce, the workforce needs of businesses, success stories from the perspectives of workers and employers, and help dispel myths regarding the hiring, performance, and retention of individuals with disabilities.~~ The public education campaign may also include information on—

(1) The work opportunity credit under section 51 of the Internal Revenue Code of 1986: and [...]

Thank you again for your efforts in introducing this reauthorization bill. We applaud the Committee's intent to reauthorize the Workforce Investment Act and put forward a plan to ensure that people with disabilities are afforded with the opportunity to work.

Sincerely,

Kelly Buckland, National Council on Independent Living
Co-chair

Alicia Epstein, SourceAmerica
Co-chair

Susan Goodman, National Down Syndrome Congress
Co-chair

Peggy Hathaway, National Association of Councils on Developmental Disabilities
Co-chair

Paul Seifert, Goodwill Industries International, Inc.
Co-chair



July 22, 2013

U.S. Senator Tom Harkin
Chairman
Senate Committee on
Health, Education, Labor & Pensions (HELP)
United States Senate
SD-428 Dirksen Senate Office Building (Committee Staff)
SH-731 Hart Senate Office Building (Personal Office/Staff)
Washington, DC 20510

U.S. Senator Lamar Alexander
Ranking Member
Senate Committee on
Health, Education, Labor & Pensions (HELP)
United States Senate
SD-455 Dirksen Senate Office Building
Washington, DC 20510

U.S. Senator Patty Murray
Chairman
Senate HELP Subcommittee on
Employment and Workplace Safety
SD-428 Dirksen Senate Office Building
Washington, DC 20510

U.S. Senator Johnny Isakson
Ranking Member
Senate HELP Subcommittee on
Employment and Workplace Safety
SD-428 Dirksen Senate Office Building
Washington, DC 20510

Dear Senators:

The undersigned organizations applaud your leadership and efforts to introduce and move forward the reauthorization of the Workforce Investment Act (WIA) in the 113th Congress. We appreciate the hard work and dedication that has been invested in preparing the Senate draft legislative package, and we want to support the Committee in finalizing the reauthorization to ensure the critical reforms necessary to achieve increased employment outcomes for all citizens living with disabilities.

Our concerns about citizens with disabilities being significantly underrepresented in the labor force are well documented in current data sets from branches of the federal government. Approximately 20 % of the nation's population is comprised of individuals living with disabilities. According to the American Community Survey of 2011, the percentage of people working with disabilities is 32.4% compared with 70.5% of people without disabilities. As a result of non-work and dependence on public benefits, 27.9% of Americans who live with disabilities also live in poverty when compared with 15% of the population without disabilities. Individuals living with disabilities experienced the highest rates of poverty of any other subgroup of Americans for the tenth successive year (U.S. Census Bureau, September 13, 2012). We know that you share our concerns and that the barriers to competitive, integrated employment at minimum wage or above for individuals living with disabilities can and must be removed to secure the promise of the IDEA, DD ACT, Rehabilitation Act, and the ADA. In 2015, we will be celebrating the 40th anniversary of the IDEA and the 25th anniversary of the ADA. Individuals with disabilities and their families are depending on your leadership to assure their opportunities for economic self-sufficiency rather than lives of dependency and poverty.

Title V of the draft Senate WIA Reauthorization package includes major changes aimed at transforming the current vocational rehabilitation system, with a particular focus on significantly improving the outcomes of youth with significant disabilities. The CPSD applauds the majority of the efforts of the Senate Committee within this title, including but not limited to the following tremendous reforms:

- Extension of supported employment services to 24 months;
- The inclusion of Customized Employment as a unique and valuable set of strategies to be offered to people with significant disabilities;
- Direct emphasis on the preferred outcomes of competitive integrated employment and post-secondary education for all youth, including youth with significant disabilities;
- Required cooperative agreements among VR and other state agencies critical to the provision of transition, employment and long-term supports and services to citizens with significant disabilities;
- Stronger data collection & reporting requirements attempting to capture more detailed, outcome-oriented data to better evaluate the effectiveness of the VR system in helping individuals with disabilities complete employment objectives (emphasizing attainment of competitive integrated employment and stratified by disability type);
- Creation of local transition coordinators within the VR system tasked with ensuring the effective delivery of pre-employment transition services for youth with significant disabilities and greater linkages between the VR system and special education;
- Targeting of 10% of all state VR resource allotments toward implementation of the transition components of the legislation;
- Establishment of a National Demonstration on Transition of Youth with Significant Disabilities;
- Focused attention of research and training activities toward supporting providers of sheltered employment who desire to transform into providers of community-based employment supports that lead to competitive, integrated employment (and restrictions on the use of training dollars and technical assistance to further perpetuate segregated or sheltered employment practices);
- Creation of the Independent Living Administration;
- Funding directives to encourage more intensive state focus on the expansion of supported employment services to youth with significant disabilities most at-risk of being placed in sheltered work or not securing employment in the generic workforce.

While the original intent of Section 511 was to reduce the number of youth with significant disabilities being deemed ineligible for VR services and placed into sheltered workshops to make subminimum wages, the ambiguity of the current language contains several loopholes that may inadvertently put more youth at risk. Section 511, as currently written, puts youth with significant disabilities at greater risk of being unnecessarily placed in sheltered workshops and/or paid subminimum wages despite their potential to participate in the general workforce.

In its statement on June 13, 2013 regarding the landmark settlement agreement between the United States, the State of Rhode Island, and the City of Providence, vindicating the civil rights of approximately 200 individuals with intellectual or developmental disabilities (I/DD), the DOJ's Disability Rights Section said, "The ADA requires government services for people with disabilities to be provided in the most integrated setting appropriate for them. The Supreme Court decision making this requirement clear, *Olmstead v. LC*, has been called the *Brown v. Board of Education* of the disability rights movement."

DOJ's comments go onto state that "participation in the mainstream of American life was the goal of the Americans with Disabilities Act since its passage over 20 years ago. The ADA prohibits state and local governments from segregating people with disabilities just because of their disabilities... Unfortunately, the type of segregation and exploitation we found...is all too common when states allow low expectations to shape their disability programs."

Sending Americans with disabilities to sheltered workshops segregates people with disabilities using both federal and state taxpayer dollars. This model flies in the face of the ADA and will do nothing to raise the expectations for individuals with disabilities and their families to achieve the four goals of the ADA: equality of opportunity, economic self-sufficiency, independent living and full participation. We need your continued leadership to raise those lowered

expectations held by far too many.

Indeed, the Senate HELP committee's own recent report entitled *Separate and Unequal: States Fail to Fulfill the Community Living Promise of the Americans With Disabilities Act*, reads: "the Supreme Court's 1999 decision in *Olmstead v. L.C.* put states on notice that unnecessary segregation of individuals with disabilities is a violation of the Americans with Disabilities Act (ADA) of 1990". The Department of Justice concurs and is using this argument as its basis to force several states to provide Americans with disabilities the choice to work in their communities in integrated employment at minimum wage or higher: a choice that they are routinely denied by being forced to work in restrictive, segregated employment at subminimum wages.

We believe that the Committee's proposed language in Section 511 unintentionally creates a pathway for placing youth with significant disabilities into positions earning subminimum wages. If passed as currently written, Section 511 would greatly undermine the existing guidance issued by the U.S. Department of Education's Office of Special Education & Rehabilitation Services, which prohibits the placement of an individual into sheltered employment or subminimum wage positions to be counted as a successful VR case closure. Section 511 in effect prescribes the steps that VR agencies should take before placing an individual into a subminimum wage position. CPSD believes that while the Committee is attempting to reduce the number of youth with significant disabilities from being inadvertently placed into center-based employment and subminimum wage positions, the implementation of Section 511 as currently written will unfortunately lead to the exact opposite outcome.

The Department of Justice has spoken. The Supreme Court has ruled. The Senate HELP Committee has published its national findings. CPSD respectfully urges the Senate HELP Committee to strike out Section 511 in its entirety from this reauthorization of the Workforce Investment Act and to be on the correct side of history in the next wave of disability rights. CPSD believes that maintaining Section 511 put the entire legislative package at risk and actually takes the VR system backwards. Maintaining Section 511 jeopardizes all of the other important aspects of the legislation related to successfully transitioning youth with significant disabilities into community-based post-secondary education and competitive, integrated employment.

Thank you again for your leadership and for serious consideration of our comments. We look forward to working with you to align federal policies and financing to achieve the valued goal of integrated, competitive employment for all citizens with disabilities.

Sincerely,

APSE
Autistic Self-Advocacy Network
Autism Society of America
National Down Syndrome Congress
National Down Syndrome Society
National Federation of the Blind
National Fragile X Foundation
National Organization of Nurses with Disabilities
Parent to Parent USA
Physician-Parent Caregivers
TASH